

W. 2773

No. 13548

United States
Court of Appeals
for the Ninth Circuit.

STANDARD PAPER BOX CORPORATION
and DONALD C. RUSSELL,

Appellants,

vs.

CHARLES RUBLE, SR., CHARLES RUBLE,
JR., R. T. MILLER, FRANK W. CLARK,
JR., GEORGE P. RICHARDSON and AS-
SOCIATED PAPER BOX COMPANY,

Appellees.

Transcript of Record

Appeal from the United States District Court
Southern District of California,
Central Division.



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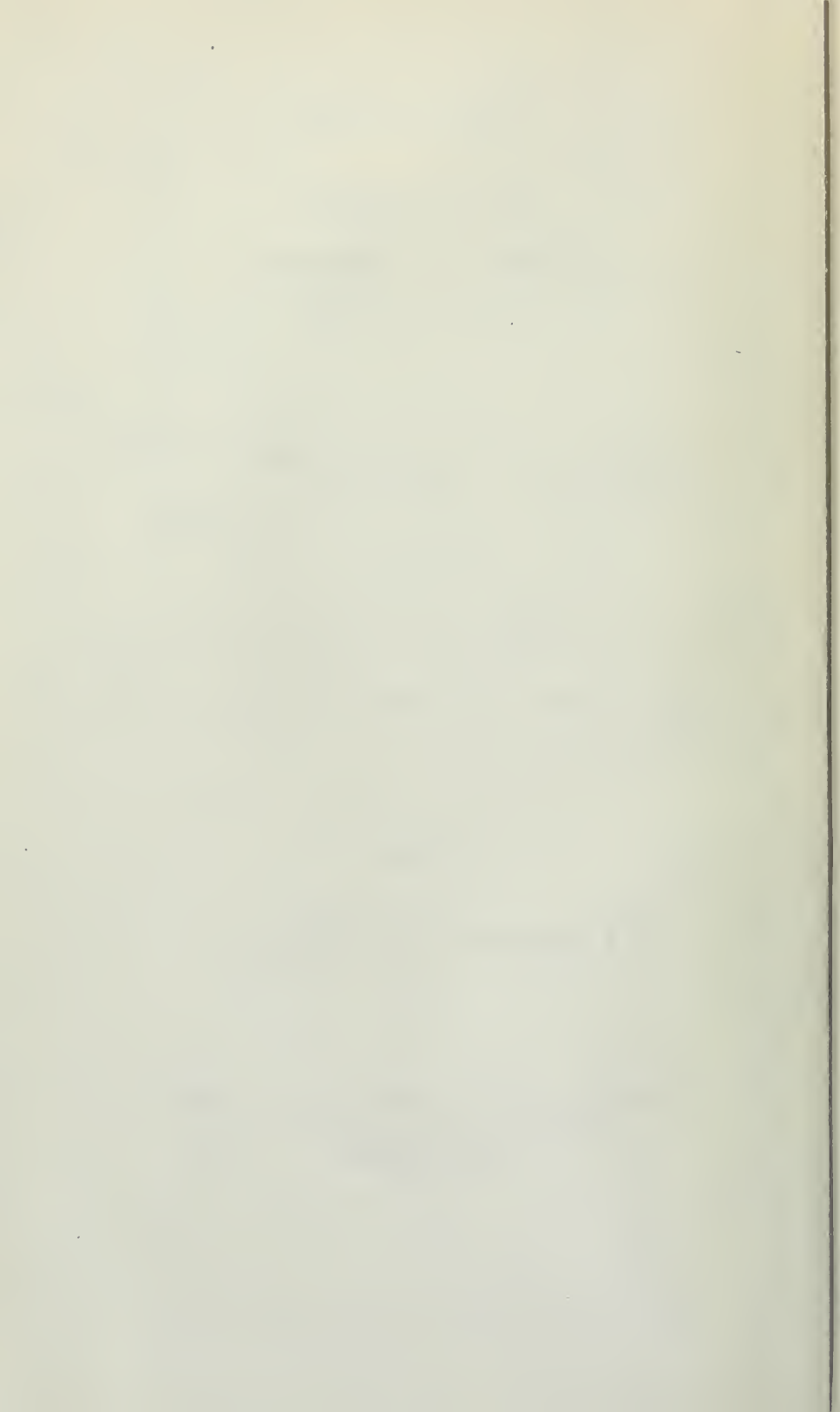
vs.

CHARLES RUBLE, SR., CHARLES RUBLE,
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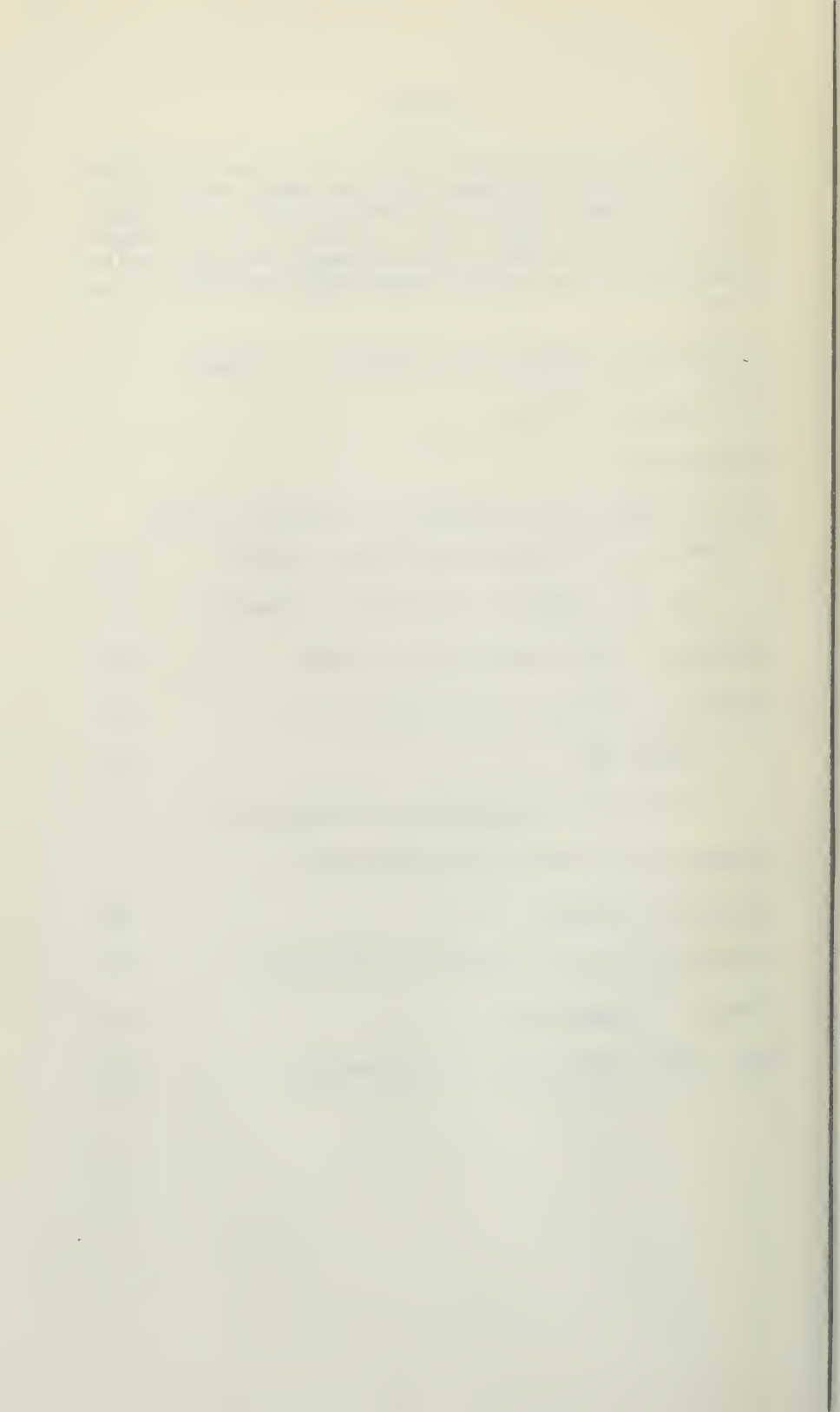
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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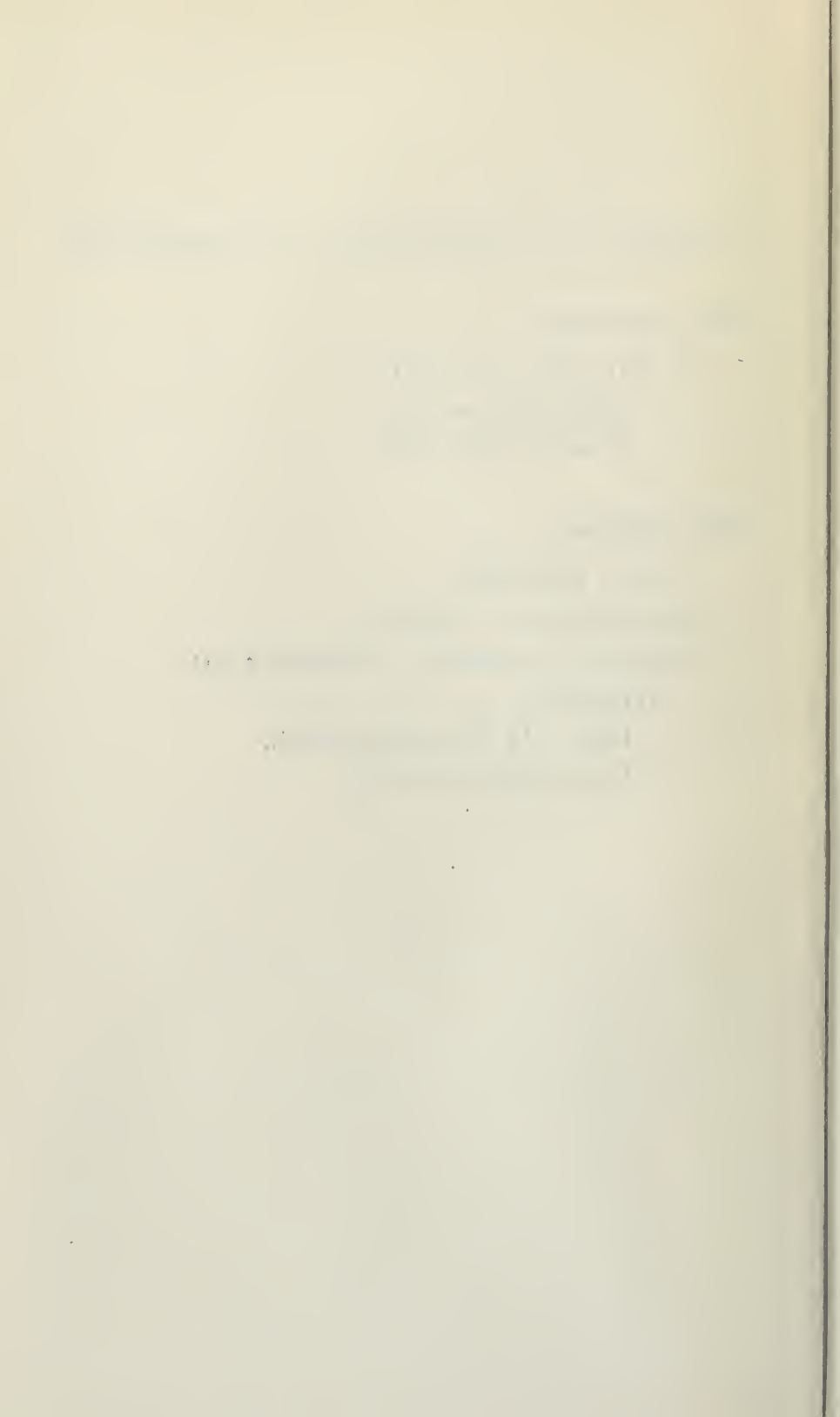
NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

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For Appellees:

LOYD WRIGHT,
CHARLES A. LORING,
WRIGHT, WRIGHT, GREEN AND
WRIGHT,
1125 - 111 West Seventh St.,
Los Angeles 14, Calif.



In the United States District Court, Southern
District of California, Central Division

Civil Action No. 14151-T

STANDARD PAPER BOX CORPORATION, a
Delaware Corporation, and DONALD C. RUSSELL,

Plaintiffs,

vs.

CHARLES RUBLE, SR., CHARLES RUBLE,
JR., R. T. MILLER, FRANK W. CLARK,
JR., GEORGE P. RICHARDSON and ASSOCIATED PAPER BOX COMPANY, a
Washington Corporation,

Defendants.

COMPLAINT FOR: DECLARATORY RELIEF,
ACCOUNTING, APPOINTMENT OF RECEIVER,
DAMAGES, AND FOR EQUITABLE RELIEF

Comes Now the Plaintiffs, Standard Paper Box Corp., a Delaware Corporation, and Donald C. Russell, Director of Standard Paper Box Corp., and for a cause of action against the defendants alleges as follows:

I.

That the Plaintiff, Standard Paper Box Corporation, was duly incorporated under the laws of the State of Delaware; and is doing business in the State of California as a foreign corporation, and has issued and outstanding at the present time,

Eight Thousand Two Hundred Fifty-four (8,254) shares of 5% Preferred Stock, having a total par value of \$206,350.00 and Nine Thousand Four Hundred Eighty-six (9,486) shares of common stock of no par value; that it is [2*] in the business of manufacturing and selling paper boxes and kindred items thereto throughout the United States and, among other places, operates as follows:

(a) Principal office and place of business at 3837 Broadway Place, Los Angeles, California, where it maintains a manufacturing plant and executive offices;

(b) A branch manufacturing plant at Longview, Washington;

(c) A branch sales office at San Francisco, California;

That said corporate defendant, Standard Paper Box Corporation, for the purpose of brevity, will be herein referred to as "Standard."

II.

That the common shareholders of Standard insofar as it is known to Plaintiff Donald C. Russell, are as follows:

(a) Donald C. Russell, 506 shares.

(b) John A. Russell (father of Plaintiff herein), 255 shares.

(c) Lillian Russell (mother of Plaintiff herein), 573 shares.

(d) Earl K. Russell (brother of Plaintiff herein), 200 shares.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

(e) Charles Ruble, Sr., Charles Ruble, Jr., R. T. Miller, approximately 6,324 shares.

III.

That Plaintiff Donald C. Russell is a resident of the City and County of Los Angeles, State of California, and has been since February 1, 1951, and now is a duly elected director of Plaintiff Standard and renders legal services in patent matters to Standard.

IV.

That Associated Paper Box Company, corporate defendant herein, was duly incorporated under the laws of the State of Washington, and that all of its outstanding capital stock, consisting of Sixteen Hundred (1600) shares, with a par value of \$25.00 per share, is owned and held by Standard; that this corporate defendant, Associated Paper Box Company, is hereinafter for purpose [3] of brevity, referred to as "Associated."

V.

That Defendants Charles Ruble, Sr., Charles Ruble, Jr., and R. T. Miller are residents of the County of Los Angeles and of the State of California. That at all times herein mentioned said Defendants were and now are the owners and holders of the majority of the outstanding common stock of Standard as aforesaid, and have continuously held, and are presently holding, the following offices with Standard:

Charles Ruble, Sr.—President, General Manager and Director.

Charles Ruble, Jr.—Vice-President and Treasurer (Director to February 8, 1952).

R. T. Miller—Secretary and Director.

Further, that said Defendants are also holding the following offices with Associated and have held the same for a length of time unknown to Plaintiff:

Charles Ruble, Sr.—President, General Manager and Director.

Charles Ruble, Jr.—Vice-President and Director.

R. T. Miller—Secretary, Treasurer and Director.

That said Defendants, Charles Ruble, Sr., his son, Charles Ruble, Jr., and his son-in-law, R. T. Miller, when not referred to individually, are hereinafter for the purpose of brevity, referred to as the "Ruble Family."

VI.

That on the 8th day of May, 1952, and for a long time prior thereto Defendants Frank W. Clark and George P. Richardson were and now are duly elected directors of Plaintiff Standard. That Defendant Frank W. Clark, Jr., is employed by Plaintiff Standard as its corporation and tax counsel upon an annual basis. That Defendant George P. Richardson is a foundry manufacturer and is President of the [4] Service Foundry Company. That said Defendants are residents of the County of Los Angeles, State of California.

VII.

That this Court has jurisdiction of the cause by reason of the complete diversity of citizenship of Plaintiffs and Defendants; that the amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs; and, that this action is not collusive for the purpose of conferring jurisdiction upon this Court.

VIII.

That as to the factual matters hereinafter set forth in this Complaint, Plaintiffs are informed and believe said matters to be true, and basing such allegations on such information and belief Plaintiff alleges and avers the following; to wit:

That at all times herein mentioned, the operation of Standard was, and is now being conducted under the direction and supervision of the Ruble Family; that they entered upon a plan and scheme to knowingly and deliberately use Standard and Associated for their own personal benefits and profits, and to perpetuate their control of Standard solely for themselves; all in complete disregard of the rights of Plaintiff Standard and the rights of the minority shareholders of Standard; and, in furtherance of said plan and scheme, individually and in concert with Defendant Associated, they did cause the events hereinafter more particularly set forth.

IX.

The Associated Paper Box Company, now referred to as "Associated," was incorporated under

the laws of the State of Washington during the year 1946, with an authorized paid in capital of \$40,000.00 for the purpose of engaging in the operation and conducting of a business for the manufacture and sale of paper products; that said shares of stock were under the direction of the Defendant, Charles Ruble, Sr., who owned, and/or controlled the [5] majority of said shares, and who knew the business to be conducted by Associated would be in competition with the business being then conducted by Standard.

During the latter part of the year 1948 when indications were that Associated had not been successful in its operations but on the contrary was and had been sustaining substantial losses, and had become indebted for approximately \$160,000.00, and was without funds or assets to pay its creditors, and was insolvent or unable to meet its maturing obligations, the Ruble Family without authority, caused Standard to purchase the worthless shares of Associated by paying the par or stated value of such shares amounting to \$40,000.00 back to the original shareholders including the said Charles Ruble, Sr., and caused Standard to assume approximately \$20,000.00 for personal loans allegedly made to Associated by its shareholders and caused Standard to further assume all of the other liabilities of Associated, which were then in excess of \$140,000.00 for all of which Standard received the unsecured note of Associated and other practically worthless realizable assets.

As a part of said plan, in order to make funds

available to Associated for the purpose of enabling it to pay off its said note to Standard, the Ruble Family caused Standard to rent the plant and equipment retained by Associated at an excessive minimum rental of \$40,000.00 per year and did cause Standard to operate such plant and equipment under the designation of the "Longview Branch of Standard"; that continuously thereafter and ever since the Longview Branch of Standard has consistently, persistently, continuously and admittedly lost large sums of money of a total amount in excess of \$200,000.00; that in addition thereto Standard was necessarily compelled, by reason of the operation of the Longview Branch, to absorb costs and expenses which Standard would not have otherwise incurred, thus suffering an additional loss to Standard in an approximate sum of [6] \$200,000.00.

That through such wrongful acts on the part of the Ruble Family, Standard became the sole owner of all the outstanding capital stock of Associated and the members of the Ruble Family thereafter each became an officer and director of Associated, and as such have since conducted Associated's business operations, which consist of renting Associated's property and equipment to Standard.

That the Ruble Family, after wrongfully "baling out" the shareholders and creditors of Associated, and having caused Standard to assume all the liabilities of Associated then caused Standard to go on record against paying any dividends to its common shareholders.

That Standard, having been compelled to pay out large sums of money to Charles Ruble, Sr., and his friendly shareholders and creditors of Associated, it became necessary to justify such purchase of Associated, and in purported justification thereof, the Ruble Family have continually operated the Longview Branch under the claim or guise of an alleged tax savings device as will more particularly be disclosed through an accounting; and as a result thereof, the losses sustained to Standard by reason of such wrongful acts of the Ruble Family are in excess of \$400,000.00; and that the Ruble Family should be held accountable, individually and severally, to Standard, for all such losses as may be disclosed upon a true accounting, and that such individual defendants be required to pay such amounts to Standard.

That regardless of demands on the Ruble Family to close, sell or liquidate the Longview Branch of Standard, they have refused so to do and persist in their refusal; that even now during the year 1952 the Longview Branch is being operated at a loss of approximately \$10,000.00 per month, and in order to prevent further losses to Standard, the Ruble Family should be restrained from further causing Standard to operate the Longview Branch, and the [7] Longview Branch should be closed, sold or liquidated forthwith and that the Ruble Family be held accountable to Standard therefor.

X.

That as a further part of said plan and scheme, during the fall of 1951, the Defendant Charles

Ruble, Sr., without having first obtained the proper authority from the board of directors did cause Standard to enter into a contract to purchase a Miehle Press for the sum of \$170,000.00; that said purchase was wrongful in the following particular, to wit:

1. That Standard does not nor can it expect to have a sufficient volume of sales business to sell and distribute the products that will be manufactured by such a press;

2. That to secure the proper financial returns from the operation of such a press, it will be necessary to operate the same for twenty-four (24) hours per day which would make it necessary to hire additional workers;

3. That the installation of said press is to be at the Los Angeles plant of Standard and that such installation there would be impractical and wrongful in that the Los Angeles plant is covered by fourteen (14) individual leases which expire during the year 1953, and that there is no security that Standard will continue to operate at such location after the same expire; and therefore, the cost of removal of said Miehle Press together with the loss of business as the result of such removal would be in excess of \$50,000.00.

That it was necessary to secure a loan in excess of \$100,000.00 in order to purchase the said Miehle Press, and that by reason of said loan, and to secure the payment of the same, Standard has again gone on record to pay no dividends to its common shareholders until said loan has been paid in full.

XI.

In furtherance of said plan and scheme of the Defendants, [8] the Ruble Family, acting individually or in concert, have contrary to the best interests of Standard, acted in a manner herein set forth in that they have operated and conducted Standard on the theory that they own all of the shares of Standard and thereby have failed to protect, or even regard, the rights of Plaintiff Standard and of the minority shareholders and further, failed to conduct and operate Standard on established business principals, in that, inter alia:

1. Charles Ruble, Sr., did purchase the said Miehle Press as above alleged, without prior approval or authority having been first had and obtained, which purchase was not necessary for Standard's operations and was purchased with the intent of so obligating Standard so that no dividends could be paid for years to come;

2. Did cause to be advanced to the Longview Branch since 1948, sums in excess of \$300,000.00 in part to pay over the \$40,000.00 minimum rental per annum, which advances were unnecessary and wrongful, for which the Ruble Family herein should be held personally liable to Standard therefor;

3. Did promote the lease of the real estate and building at 2505 W. 25th Place, Los Angeles, California; that the above-mentioned property is owned by Standard and represents an approximate investment of \$300,000.00; that the Ruble Family recently caused Standard to lease this property to

one United Disposal Company, covering a five-year term at a rental of \$1,000.00 per month, which rental is completely inadequate; that good business judgment would require this property to have been sold to create working capital for Standard, but by reason of this wrongful lease, said real estate is committed for a period of five years and the sale thereof is made remote; that the possibilities of a sale for an adequate amount subject to such lease is unlikely by reason of such a small return on so substantial an investment; [9]

4. Deliberately prevented shareholders from receiving any equitable share of the profits of Standard by wilfully and unlawfully failing and refusing to declare dividends to shareholders for the last five years in spite of the fact that the admitted sales of Standard for such period has been in excess of \$10,000,000.00.

5. Through Standard's system of accounting and alleged tax saving device, the surplus account of Standard at the end of 1950 failed to show any substantial increase although substantial sales for the four years prior thereto, beginning in 1947, amounted to approximately \$7,350,000.00.

6. Did personally purchase common shares of Standard from disgruntled shareholders for inadequate considerations, while at the same time requiring Standard, without authority, to purchase the preferred shares of such disgruntled shareholders when the same could not be purchased for less than the par value thereof.

7. Have failed to declare dividends for the year

1951 in violation of Section 102 of the Internal Revenue Code.

8. Did charge excessive and unreasonable expenditures, particularly traveling expenses, entertainment, executive expense allowances, and business gratuities which were in effect remuneration in the form of personal living items although disguised as herein alleged.

9. Did purchase a Chrysler Imperial automobile for approximately \$5,000.00 for use by the Defendant Charles Ruble, Sr., and a Lincoln automobile for approximately \$4,000.00 for the defendant Charles Ruble, Jr., which cars are used mostly for their own individual purposes and for which they should be held accountable to Standard.

10. Did pay to the Defendant Charles Ruble, Jr., the sum of \$5,000.00 per annum as salary while he was still attending [10] school, which payment was excessive and wrongful;

11. Did pay the Ruble Family during the year 1951, excessive salaries in violation of the Wage Stabilization Act without complying with the procedure under such Act for such increases;

12. Have caused good and efficient management and organization to be continually lost to Standard because of the preference given by the defendant, Charles Ruble, Sr., to his son, the Defendant Charles Ruble, Jr., and his son-in-law, the Defendant R. T. Miller.

13. In spite of sales of approximately \$2,500,000.00 during the year 1951, the gross profits of Standard was only approximately 6%, whereas the

gross profits in similar businesses producing like products, averaged approximately 20% during such year;

14. Did wrongfully maintain a sales office in San Francisco which operated at a continual loss;

15. Continue to pay themselves excessive salaries even though they are not qualified for the requirements of the offices which they now hold.

XII.

That there are circumstances surrounding the business activities of Standard with other persons, firms, corporations, and other entities, not presently known to plaintiffs, in the paper industry that lead plaintiffs to believe, and upon such information and belief plaintiffs therefore allege that there are interlocking and commingling business relationships and arrangements between Standard, and such other persons, firms, corporations and such entities as:

(a) Pacific Paper Board Company controlled by one, E. E. Flood (one of the four original stockholders of Associated). That said Pacific Paper Board Company was a creditor to the extent [11] of \$150,000.00 of Associated which said Associated's obligation was assumed by Standard as hereinabove set forth.

(b) United Disposal Company located at 2505 West 25th Place, Los Angeles, California. That said United Disposal Company operates a waste paper plant at said location as tenant of Standard as hereinabove set forth.

That said relationships and arrangements are not for the best business interests of Standard for the

reasons that will become apparent upon the proper accounting of all the books and records of Plaintiff Standard.

XIII.

That on or about the 25th day of April, 1952, John A. Russell filed Action No. 14042 in the United States District Court, Southern District of California, Central Division. That said Action was brought on behalf of all shareholders of Standard against Defendant Ruble Family, Defendant Associated, and against Standard as a nominal Defendant. That said Action prayed for an accounting, declaratory relief, the appointment of a receiver and damages. That for the purpose of brevity said Action will be hereinafter referred to as "Civil Action." That Plaintiffs at the proper time will move to consolidate the within Action with said Civil Action.

XIV.

That on the 8th day of May, 1952, a special meeting of the Board of Directors of Plaintiff Standard was duly held for the purpose of retaining counsel to appear on behalf of Plaintiff Standard in said Civil Action, and for the additional purposes of considering any other business which might come before the meeting. That all of Plaintiff Standard's directors, to wit: Donald C. Russell, Charles Ruble, Sr., R. T. Miller, Frank W. Clark, Jr., and George P. Richardson, were present at said meeting. [12]

XV.

That during the course of said meeting said Civil Action was discussed by said directors. That said

directors did not deny that the facts set forth in said Civil Action were substantially correct, but on the contrary, with the exception of Plaintiff Donald C. Russell, considered the advisability of filing technical objections to said Civil Action. That present at said meeting was an attorney known by all of Standard's directors to be then considering employment and retention by the said Ruble Family for the purpose of defending and protecting the said Ruble Family interests in connection with said Civil Action. That said directors did thereupon formally resolve in the face of Plaintiff Donald C. Russell's objections, to employ said attorney on behalf of Plaintiff Standard for the purpose of asserting technical defenses to said Civil Action.

That thereafter and during the course of said meeting Plaintiff Donald C. Russell made the following motions:

(a) That a special meeting of the shareholders of Standard be called at the earliest possible moment for the purpose of informing said shareholders of said Civil Action.

(b) That a copy of the Complaint in said Civil Action be sent to each and every shareholder of Standard. That in response to the motion the other four said directors of Standard ridiculed, laughed and made fun of Plaintiff Donald C. Russell's desire to inform all stockholders of Plaintiff Standard.

(c) That said Longview Branch of Standard be closed at the earliest practical time after completing pending orders. That each and every such motion failed for the want of a second.

XVI.

That a controversy exists between Plaintiffs Standard and Donald C. Russell on the one hand and the Defendants Ruble Family, Frank W. Clark, Jr., George P. Richardson, and Associated, [13] on the other hand, in relation to: said Civil Action, said Standard board of directors and said Defendant Associated, in that Plaintiffs contend:

(a) That any action taken or to be taken by said board of directors on behalf of Standard is void by reason of said adverse interest.

(b) That the employment of said attorney to appear on behalf of Plaintiff Standard is void by reason of said adverse interest of said attorney.

(c) That Plaintiff Standard is under the domination and control of Defendant Ruble Family through a dummy board of directors; that said Plaintiff Standard has no proper board of directors. That the said Defendant Ruble Family through the said dummy board of directors have a duty by reason of premises to dispose of the common stock of Defendant Associated, to sever all business relationships with Associated and/or to wind up and dissolve said Associated.

All of which Defendants and each of them dispute.

XVII.

That said individual defendants herein are either partners to the plan and scheme as aforesaid or have, after acquiring knowledge of said plan and scheme, countenanced the same and are for such reasons incapable of discharging their duties, re-

sponsibilities and obligations as officers and/or directors of Standard. That a meeting of said shareholders of Standard should be called under the jurisdiction of this honorable Court for the purpose of holding an election for a new and different Board of Directors. That said individual Defendants should be perpetually restrained and debarred from holding office as officer or director or otherwise in Plaintiff Standard. That pending said election this honorable Court should appoint a receiver with usual and customary powers to manage and control the affairs of Plaintiff Standard. [14]

XVIII.

That the Ruble Family will continue to perform through said dummy board of directors all of the unlawful acts complained of herein. That the assets of Plaintiff Standard will become dissipated and lost if said Defendants continue to so manage and control Plaintiff Standard unless prevented by proper order of Court.

XIX.

That Plaintiffs have no adequate remedy at law to protect and preserve their rights as director and corporation, respectively.

XX.

That it has been necessary to bring this action in order to preserve the rights of all the shareholders of Standard; the honesty and integrity of Plaintiff Standard and in reasonable discharge of the duties of Plaintiff Donald C. Russell as director of Plaintiff Standard as aforesaid. That this honorable

Court should appoint a duly licensed attorney at law to represent Plaintiff Standard herein as well as Defendant Standard in said Civil Action.

Wherefore Plaintiffs pray judgment against the Defendants as follows:

1. That the Court determine the rights of the parties in relation to said Civil Action, said Standard Board of Directors and said Associated.

2. That the operations at the Longview Branch of the Defendant Standard Paper Box Corporation, be immediately terminated and that the plant and equipment of Associated be immediately sold and liquidated and that the proceeds of such sale be turned over to the Plaintiff Standard Paper Box Corporation, or to a duly appointed receiver or receivers.

3. That the individual Defendants Charles Ruble, Sr., Charles Ruble, Jr., and R. T. Miller be compelled to account to Plaintiff Standard for all monies and properties received by said Defendants for the benefit of Plaintiff Standard; and that said [15] Plaintiff Standard have judgment against said individual Defendants for all monies due or owing said Plaintiff and not hereafter accounted for by the said Defendants together with interest therein.

4. That the individual Defendants Charles Ruble, Sr., Charles Ruble, Jr., R. T. Miller, Frank W. Clark, Jr., and George P. Richardson be forever restrained and debarred from holding any office or becoming a director of Plaintiff Standard herein.

5. That it be ordered, adjudged and decreed that a special stockholders' meeting of Plaintiff Standard be held under the jurisdiction of this honorable Court and that a new and different board of directors be elected to manage and control Plaintiff Standard.

6. That an accounting be had as to losses sustained in the operations of the Los Angeles, California, plant, and Longview, Washington, Branch of Standard as a result of the wrongful acts and mismanagement of the individual defendants; and that Plaintiff Standard have judgment against said Defendants for such amount as the Court shall find.

7. That a receiver or receivers be appointed of and for the corporate Plaintiff, Standard Paper Box Corporation, to take immediate charge and possession of its books, records, monies, real estate, leaseholds, debts, claims and property due and belonging to said corporation, and all of its assets, both real and personal, of any kind and description for the benefit of all the shareholders, with power to said receiver or receivers to carry on the business of said corporation, to apply to the courts of any State for the appointment of ancillary receiver, to prosecute and defend in the name of said corporation or otherwise all claims or suits at law or in equity which in the discretion of said receiver or receivers may be necessary or in which it may be advisable for them to appear in order to recover, obtain possession of, or control of or properly conserve and protect the assets, equities, business [16]

and interests committed to their care, custody or control by the decree, and to appoint an agent or agents under them, and to employ such counsel as may be necessary and proper and to do all other acts which might be done by said corporation and may be necessary and proper with such further powers that this Court shall deem necessary.

8. That the Defendants be ordered and directed to deliver unto said receiver or receivers, all property of any kind and nature whatsoever, and/or books of account, papers and documents belonging to, or in any wise pertaining to Plaintiff Standard Paper Box Corporation, or its business.

9. That either the business and affairs of Defendant Associated be wound up, that said Defendant's obligations be paid, the said Defendant Corporation be dissolved and its assets distributed to its stockholders, or that the capital stock of said Defendant Corporation be sold at public auction under the jurisdiction of this honorable Court.

10. For their costs, expenses and disbursements including a reasonable sum for attorneys' and auditors' fees, and for such other and further relief as the nature of the case may require, and which may seem meet, just and equitable in the premises.

Dated: May 14, 1952.

/s/ J. ROBERT MADDIX,
Attorney for Plaintiffs.

Duly verified.

[Endorsed]: Filed May 15, 1952. [17]

[Title of District Court and Cause.]

NOTICE OF MOTION UNDER RULE 12 FOR
ORDER OF DISMISSAL FOR LACK OF
JURISDICTION, AND OTHER RELIEF
AND ORDER

To the Alleged Plaintiff, Standard Paper Box Corporation, a Delaware Corporation; and to Plaintiff Donald C. Russell; and to J. Robert Maddox, Esq., Attorney for Plaintiff Donald C. Russell and to J. Robert Maddox, Esq., the Alleged Attorney for Plaintiff Standard Paper Box Corporation:

You, and Each of You, Will Please Take Notice, that the defendants in the above-entitled action, to wit, Charles Ruble, Sr., Charles Ruble, Jr., R. T. Miller, Frank W. Clark, Jr., George P. Richardson, and Associated Paper Box Company, will, [19] through the undersigned their attorneys, move the above-entitled court on Monday, June 2, 1952, at 10:00 a.m., or as soon thereafter as counsel may be heard, for an order dismissing the above-entitled action for want of jurisdiction.

Said motion will be made on the ground that the sole ground of jurisdiction of said action is the alleged diversity of citizenship of the parties; whereas, it affirmatively appears from the allegations of the complaint that plaintiff Donald C. Russell is a citizen of the State of California and the defendants Charles Ruble, Sr., Charles Ruble, Jr., R. T. Miller, Frank W. Clark, Jr. and George P. Richardson are also citizens of the State of Cali-

fornia; that there is no diversity of citizenship between the parties, and the above-entitled court has no jurisdiction of the purported causes of action set forth in said complaint.

Said motion will be based on this notice of motion, the points and authorities attached hereto and made a part hereof, and all of the records, pleadings and files in the above-entitled action.

You Will Please Take Further Notice that at said time and place Standard Paper Box Corporation, a Delaware corporation, will, through the undersigned its duly authorized attorneys, move the above-entitled court for an order dismissing said action as to Standard Paper Box Corporation and withdrawing the name of Standard Paper Box Corporation as a purported plaintiff to said action on the ground that said action was filed purporting to name said corporation as plaintiff without its knowledge, authorization or consent.

Said latter motion will be based upon this notice of motion, the affidavit of Charles Ruble, Sr. attached hereto and made a part hereof, and all of the records, pleadings and [20] files in the above-entitled action.

Dated: May 26, 1952.

LOYD WRIGHT,

CHARLES A. LORING,

By /s/ CHARLES A. LORING,

Attorneys for Charles Ruble Sr., Charles Ruble, Jr., R. T. Miller, Frank W. Clark, Jr., George P. Richardson, Associated Paper Box Corporation, a Washington Corporation, Defendants.

Of Counsel:

WRIGHT, WRIGHT, GREEN
and WRIGHT.

LOYD WRIGHT,

CHARLES A. LORING,

By /s/ CHARLES A. LORING,
Attorneys for Alleged Plaintiff Standard Paper
Box Corporation.

Of Counsel:

WRIGHT, WRIGHT, GREEN
and WRIGHT. [21]

Points and Authorities in Support of Motion to
Dismiss for Want of Jurisdiction

I.

There is no diversity of citizenship between the
parties.

Tucker vs. New Orleans Laundries (1949)
90 Fed. Supp. 290, affirmed 155 Fed. (2d)
263, certiorari denied Oct. 8, 1951, 96 L.
Ed. 33.

Respectfully submitted,

LOYD WRIGHT,

CHARLES A. LORING,

By /s/ CHARLES A. LORING,
Attorneys for moving defend-
ants. [22]

ORDER

Good cause appearing therefor, the time for the service of the foregoing notice of motion is hereby shortened, provided that a copy of said notice of motion be served by mail before 5:00 p.m., May 26, 1952.

Dated: May 26, 1952.

/s/ LEON R. YANKWICH,
Judge of the U. S. District
Court.

Affidavit of service by mail attached.

[Endorsed]: Filed May 26, 1952. [23]

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO MO-
TION OF DEFENDANTS TO DISMISS
AND OTHER RELIEF

Statement

The above-entitled action is brought by Donald C. Russell, a voluntary plaintiff, and Standard Paper Box Corporation, an involuntary plaintiff, the former a citizen of the State of California, the latter a citizen of Delaware, against the individual defendants, citizens of the State of California and corporate defendant, Associated Paper Box Company, a citizen of the State of Washington. The relief sought in this action includes damages and

an accounting declaratory and injunctive relief against the defendants named.

Issue

1. The individual defendants and the corporate defendant Associated Paper Box Corporation have noticed a motion in the above-entitled Court to dismiss the complaint on the grounds of lack of diversity [30] of citizenship between parties.

2. One, Charles A. Loring, Attorney at Law, allegedly on behalf of Standard Paper Box Corporation has noticed a motion in the above-entitled Court to dismiss the complaint and to withdraw the name of Standard Paper Box Corporation as plaintiff.

Argument

1. Complete Diversity of Citizenship Is Affirmatively Alleged in the Complaint.

It has long been the rule in questions of complete diversity of citizenship that jurisdiction will be determined upon the basis of the citizenship of indispensable parties only and a joinder of a mere nominal or proper party of a citizenship different from that of an indispensable party will not be sufficient to oust the Court of its jurisdiction.

“The nominal party plaintiff will be disregarded and jurisdiction determined by the citizenship of the relator where it appears that the latter is in fact the beneficial party in interest.”

People vs. Bruce,
129 Fed. 2nd 421 (CCA, 9, 1942)

X Party Nebraska,
209 US 436, 52 L.Ed. 876

“Jurisdiction is not ousted by the joinder or non-joinder of mere formal parties.”

Haan vs. City of Clinton,
131 Fed. 2nd 978.

The case of Tucker vs. New Orleans Laundries cited by counsel for defendants in support of his motion is not in point for the reason that the action therein involved was a shareholder's suit brought against officers and directors of a corporation as well as against the corporation itself. The above-entitled matter is not such an action, but is rather an action brought by the corporation against its officers and directors. [31]

It is therefore, respectfully submitted that in view of the fact that Plaintiff Donald C. Russell is a mere formal or proper party plaintiff in the above-entitled matter, that his citizenship should not be questioned for the purpose of determining the jurisdiction of the Court, but only the citizenship of Plaintiff Standard Paper Box Corporation should be questioned, inasmuch as the Corporation Plaintiff is the beneficial party in interest and it is, therefore, submitted that the motion to dismiss should be denied.

2. The motion to dismiss and withdraw Standard Paper Box Corporation as plaintiff is not in conformity with the Federal rules of civil procedure.

This motion is predicated upon Rule 12, FRCP. An examination of this Rule and its Subdivisions indicates that this type of motion is not therein authorized. An examination of the remaining rules does not disclose authorization for any such motion as this.

Plaintiff Standard Paper Box Corporation has been joined pursuant to Rule 19/A FRCP, which provides "when a person who should join as a plaintiff refuses to do so, he may be made a defendant or in proper case, an involuntary plaintiff."

Cal Cote vs. Texas Pac. Co. and Oil Co.

157 Fed. 2nd 216 (CCA, 5, 1946); Cert. Denied 329 U.S. 782, 91 L. Ed. 671 (1946).

If the existing Board of Directors of Plaintiff Standard Paper Box Corporation intend to properly appear in this action and to assert any objection that they may have as to the authorization of Plaintiff Standard Paper Box Corporation to sue, they should make timely application under Rule 24 FRCP, Subdivision B, which provides:

"Upon timely application anyone may be permitted to intervene in an action: * * * (2) When an applicant's claim or [32] defense and the main question have a question of law or fact in common."

Upon the granting of leave to intervene pursuant to this Rule, the contentions set forth by this motion may be properly pleaded pursuant to Rule 9/A FRCP, Subdivision A, provides:

“When a party desires to raise an issue as to * * * the capacity of any party to sue or * * * the authority of a party to sue * * * he shall do so by specific negative averment.”

The affidavit of Plaintiff Donald C. Russell, as attached hereto and marked Exhibit A, and by this reference made a part hereof as though fully set forth at length. It is apparent from the reading of this Affidavit, together with those presented in support of the motion, and in view of the allegations of the verified complaint, that this is an attempt to dispose by motion of the very matter at issue which, it is submitted, should await a trial on the merits rather than to be disposed of in a summary manner by affidavit.

Rule 12 FRCP, Subdivision D, provides in substance that the Court in its discretion, may deny such a motion as appears to have been intended herein, until a full and complete hearing thereof by a trial on the merits.

It is therefore respectfully submitted that the motion to dismiss and withdraw Plaintiff Standard Paper Box Corporation from the within cause be denied.

Dated: May 29, 1952.

/s/ J. ROBERT MADDUX,
Attorney for Plaintiffs. [33]

EXHIBIT A

State of California,
County of Los Angeles—ss.

Donald C. Russell being duly sworn deposes and says:

That he is one of the plaintiffs in the within matter. That on the 23rd day of May, 1952, he was and now is a duly elected and acting director of Plaintiff Standard Paper Box Corporation.

That prior to said May 23rd, 1952, a special meeting of the Board of Directors of Plaintiff Standard Paper Box Corporation was noticed by the Corporation's Secretary, R. T. Miller, one of the defendants in the within matter. That said notice provided that the meeting was called:

“for the purpose of considering the following matters and taking appropriate action with reference thereto:

“1. That certain action entitled ‘Standard Paper Box Corporation and Donald C. Russell, plaintiffs, vs. Charles C. Ruble, Sr., et al., defendants,’ U. S. District Court No. 14151-PH;

“2. Consideration of employing the law firm of Wright, Wright, Green and Wright to represent the corporation in connection with such action, and in all matters relating and pertaining thereto;”

That said meeting was held on May 23, 1952 and in attendance among others were Plaintiff Donald C. Russell, director as aforesaid, and Charles Ruble, Sr., R. T. Miller, George P. Richardson, and

Frank W. Clark, Jr., all of whom are defendants in the within cause, as well as previously elected directors of Plaintiff Standard Paper Box Corporation.

That at the time of said meeting said defendants as individuals, had retained or were in the process of retaining the firm of Wright, Wright, Green & Wright to represent them in the [34] within cause.

That in spite of the obvious adverse interest between Plaintiff Standard Paper Box Corporation and said individual defendants, said defendants resolved on behalf of said Plaintiff Standard Paper Box Corporation to retain said firm for the purposes enumerated in Exhibit A of Defendant's Notice of Motion. That at said meeting said defendants made no effort whatsoever on behalf of Plaintiff Standard Paper Box Corporation to cause an independent, unbiased investigation to be made into the merits of the within cause.

That your affiant, as director, objected to the calling of the meeting and refused to vote on the motions then presented in view of the adverse and conflicting interests of said defendants.

/s/ DONALD C. RUSSELL.

Subscribed and sworn to before me this 29th day of May, 1952.

[Seal] /s/ NANCY FEATHERSTONE,
Notary Public in and for said
County and State.

Affidavit of service by mail attached.

[Endorsed]: Filed May 31, 1952. [35]

[Title of District Court and Cause.]

MINUTES OF THE COURT—JULY 3, 1952

Present: The Honorable Peirson M. Hall,
District Judge.

Proceedings: Heretofore submitted on defendant's Motion to Dismiss the Action; and Motion Standard Paper Box Corporation to Dismiss and to withdraw its name as a purported plaintiff.

It Is Ordered: That the Motion of the Defendants to Dismiss the Action be granted for lack of jurisdiction on the ground of lack of diversity. This makes it unnecessary to pass on Motion of Standard Paper Box Corp. to dismiss and to withdraw its name as a purported plaintiff. Counsel for Defendants will draw an order.

EDMUND L. SMITH,
Clerk,

By S. W. STACEY,
Deputy Clerk. [37]

In the United States District Court, Southern
District of California, Central Division

Civil No. 14,151-PH

STANDARD PAPER BOX CORPORATION, a
Delaware Corporation, and DONALD C. RUS-
SELL,

Plaintiffs,

vs.

CHARLES RUBLE, SR., CHARLES RUBLE,
JR., R. T. MILLER, FRANK W. CLARK,
JR., GEORGE P. RICHARDSON, ASSOCI-
ATED PAPER BOX COMPANY, a Wash-
ington Corporation,

Defendants.

ORDER OF DISMISSAL

In the above-entitled action the motion of the defendants Charles Ruble, Sr., Charles Ruble, Jr., R. T. Miller, Frank W. Clark, Jr., George P. Richardson and Associated Paper Box Company, a Washington corporation, to dismiss for lack of jurisdiction and the motion of Standard Paper Box Corporation, a Delaware corporation, to dismiss said action as to Standard Paper Box Corporation and withdraw its name therefrom as a purported plaintiff to said action came on for hearing before the above-entitled court, Honorable Peirson Hall, Judge Presiding, Wright, Wright, Green and Wright by Charles A. Loring, Esq. [38] appearing in support of the motions and J. Robert Maddox,

Esq. appearing on behalf of the plaintiff, said motions having been duly argued and submitted for decision and it appearing that this court lacks jurisdiction of said action in that it affirmatively appears that there is no requisite diversity of citizenship between the parties.

It Is Ordered that the motion of defendants to dismiss the action for lack of jurisdiction on the ground of lack of diversity be granted and said action is forthwith dismissed.

The Clerk is directed to enter this Order.

Dated: July 14, 1952.

/s/ PEIRSON M. HALL,

Judge of the U. S. District
Court.

Presented by:

/s/ CHARLES A. LORING,

Attorney for defendants.

Affidavit of service by mail attached.

[Endorsed]: Filed July 14, 1952.

Docketed and entered July 15, 1952. [39]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF ORDER
OF DISMISSAL

Notice Is Hereby Given that Order of Dismissal of the above-entitled action was entered on July 15, 1952.

Dated: July 25, 1952.

LOYD WRIGHT,

CHARLES A. LORING,

WRIGHT, WRIGHT, GREEN
& WRIGHT,

By /s/ CHARLES A. LORING,
Attorneys for Defendants and Alleged Plaintiff
Standard Paper Box Corporation.

Affidavit of service by mail attached.

[Endorsed]: Filed July 28, 1952. [41]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Standard Paper Box Corporation and Donald C. Russell, Plaintiffs above named, appeal to the United States Court of Appeals for the Ninth Circuit, from the Order of Dismissal entered in this action on the 15th day of July, 1952.

Dated: At Beverly Hills, California, this 11th day of August, 1952.

/s/ J. ROBERT MADDOX,
Attorney for Plaintiffs Standard Paper Box Corporation and Donald C. Russell.

[Endorsed]: Filed August 14, 1952. [43]

In the United States District Court, Southern
District of California, Southern Division

No. 14042-PH Civil

JOHN A. RUSSELL,

Plaintiff,

vs.

CHARLES RUBLE, SR., et al.,

Defendants.

No. 14151-PH Civil

STANDARD PAPER BOX, et al.,

Plaintiffs,

vs.

CHARLES RUBLE, SR., et al.,

Defendants.

Honorable Peirson M. Hall, Judge Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

Appearances:

For the Plaintiffs:

J. ROBERT MADDOX, ESQ.,
9363 Wilshire Boulevard,
Beverly Hills, California.

For the Defendants:

WRIGHT, WRIGHT, GREEN
& WRIGHT,
111 West Seventh Street,
Los Angeles 14, California; by
CHARLES A. LORING, ESQ.

June 2, 1952; 10:00 A.M.

(Other court matters.)

The Clerk: No. 14042-PH, Civil, John A. Russell vs. Charles Ruble, Sr., et al.

Mr. Loring: Ready for the moving party.

Mr. Maddox: Ready for the responding party.

The Court: Is that the same as Standard Paper Box vs. Ruble?

Mr. Loring: It is a different plaintiff, if the court please, but we think the issues are substantially the same.

The Court: Who represents Standard Paper Box?

Mr. Maddox: My name is Maddox, your Honor. In that second matter I represent the plaintiff Donald C. Russell and Standard Paper Box Corporation.

The Court: May these be argued together?

Mr. Maddox: I see no objection to that, as far as I am concerned.

Mr. Loring: Yes.

The Court: This is a motion of all defendants to dismiss?

Mr. Loring: Yes, your Honor.

Does your Honor desire us to argue it now or were you just calling the calendar?

The Court: This is the last matter on the calendar. [2*]

Let me glance at the file here a moment.

Is there an attempt to state a cause of action for fraud in this complaint?

Mr. Loring: Not in my opinion, your Honor.

Mr. Maddox: We think the facts as alleged indicate that, particularly with reference to the dealings in connection with a corporation called Associated Paper Box Corporation, which is a wholly owned subsidiary of the defendant Standard.

Mr. Loring: May I interrupt to make a preliminary objection, if the court please?

The matter which is on the court's calendar this morning is the motion of the defendants to dismiss and also make more definite and certain and strike portions of the complaint.

There was only noticed for this morning a motion for security under Section 834 of the California Corporation Code, supported by voluminous affidavits and points and authorities.

Counsel obtained an order of court continuing the hearing on that motion for security until June 23rd. I cannot advise the court which judge signed the order, but I have no doubt that such an order was made.

Now under Section 834 of the Corporation Code it provides that if any such motion is filed no pleadings need be filed by the corporation or any other defendant and the [3] prosecution of such action shall be stayed until 10 days after such motion shall have been disposed of.

We object on the ground——

The Court: Was such a motion filed in both cases?

Mr. Loring: No, your Honor, and the reason it was not filed in the other case is because we felt that there was no doubt about the jurisdiction

question in the Donald Russell case and that case would be disposed of before we could ever get our papers prepared to apply for security.

The Court: The Donald Russell case is the Standard Paper Box case?

Mr. Loring: That is right.

We object to a hearing on the motion in the John Russell case this morning on the ground that a motion for security has been filed and is now pending, and under the Corporation Code all proceedings are to be stayed until that motion is disposed of.

I think that is a very wise provision, if the court please, for this reason——

The Court: What does that code section require? These are stockholders' suits?

Mr. Loring: That is right, minority stockholders' suits.

The sole basis of jurisdiction is diversity. This code section requires certain conditions precedent to the filing of the action and then provides that the defendants may make [4] an application for security to indemnify them for their court costs, expenses and attorneys' fees.

Now the reason I think for the law, that the proceedings are to be stayed until that motion is disposed of, is because the only penalty for failure to post the security if it is ordered by the court is that the action is dismissed and——

The Court: I think the reason for the law is obvious. Perhaps you are too young to historically remember the flock of suits that were filed by

parties who would go in and buy two shares of stock and aggravate a corporation to a point where they would settle.

In other words, all over the country there were groups of lawyers who made their living doing that and nothing else.

So, as far as the defendant was concerned, it was a question of shelling out a few dollars for a settlement or expending many dollars in defense.

Mr. Loring: That is correct, your Honor.

The Court: Can the Standard Paper Box case be heard this morning?

Mr. Loring: Yes, sir.

The Court: Are the points the same?

Mr. Loring: No, your Honor.

The Court: They are different?

Mr. Loring: Yes.

The Court: Well, does not that section provide for [5] bond regardless of the question of jurisdiction?

Mr. Loring: It does, your Honor, but we thought that the Donald Russell case would be disposed of and dismissed without much effort and therefore security wasn't a matter of primary concern like it is in the John Russell.

The Court: What is the difference between the two suits?

Mr. Loring: The difference between the two suits is this, as I read them: the John Russell case alleges that the plaintiff John Russell is a resident of Chicago, Illinois, and that we think

probably unquestionably creates the necessary diversity of citizenship.

The Donald Russell case—I don't think the pleadings show this but there is no doubt about it between counsel—Donald Russell is a son of John Russell. Donald Russell is a California lawyer and the complaint affirmatively alleges that Donald Russell is a citizen of California. Now the directors are citizens of California. On that showing alone there is no diversity of citizenship.

However, they have attempted to create diversity by——

The Court: Your statement is that that is not the required diversity, that there must be diversity between all plaintiffs and all defendants?

Mr. Loring: That is right. They have attempted to defeat that argument by joining Standard Paper Box Corporation, [6] a Delaware corporation, as a plaintiff and in the motion in the Donald Russell case we moved to dismiss for lack of jurisdiction and we also moved to withdraw the name of Standard Paper Box Corporation as a plaintiff on the ground that the naming of that corporation as plaintiff was not authorized by the corporation and that counsel purporting to represent that corporation as plaintiff is not authorized to do it and in support of that motion to withdraw Standard Paper Box as a plaintiff we have presented the corporate minutes under the seal of the secretary of the corporation showing that there was no authority to file that action in the name of the corporation.

I have no doubt but what counsel had in mind was that the corporation was a necessary party to the action and therefore it didn't make any difference whether it is a plaintiff or a defendant.

Our view is that if they couldn't obtain the consent of the corporation to name it as a plaintiff they should have named it as a defendant. This presents a situation in which one director and one minority stockholder has filed an action on behalf of a corporation without any authority of its board of directors or its stockholders or any officer.

But even if Standard Paper Box were to remain as a plaintiff there still would be no diversity by reason of the fact that Donald Russell is a California citizen. [7]

In the Tucker case, which is cited in our points and authorities, a recent case in which the United States Supreme Court denied certiorari, we think that it is clear on the point that there is no diversity.

We would therefore move that that action be dismissed for lack of jurisdiction.

Mr. Maddox—If the court please—my name is Maddox—I appear on behalf of Donald C. Russell, a director in the corporation named plaintiff Standard Paper Box Corporation.

The Court: Who is counsel for Standard Paper Box? Your name is signed on the pleadings, is it not?

Mr. Maddox: I beg your pardon?

The Court: You are signed as attorney for the plaintiff Standard Paper Box.

Mr. Maddox: That is right, your Honor.

The Court: Are you attorney for Standard Paper Box?

Mr. Maddox: If I may explain that by a longer statement than "yes" or "no," I would appreciate the opportunity.

The Court: Very well.

Mr. Maddox: If you have had an opportunity, your Honor, to read the pleadings in both of these cases you will be struck immediately with the difference in the two. Since I am concerned primarily with the second one, which is the one you just mentioned, I will address my remarks to that.

That is an action brought in the name of the corporation [8] against existing directors and officers to recover for monies which they have in some cases taken for their own use, to recover in addition for mismanagement which it is alleged in this case has existed, and in addition to secure a declaration of the rights of the parties.

In particular the declaration to this particular board of directors, which is alleged in the complaint, is in the management and control of a family which owns the majority of the stock and is in fact no board at all, and it is under this state of facts that the existing board of directors, it is contended on the part of Mr. Russell, who is the plaintiff, is not in truth and in fact a board of directors.

The Court: All that might very well be so, counsel, but it goes to the question of jurisdiction in diversity cases and I think the law is pretty

well settled in this Circuit that unless there is diversity between all of the plaintiffs and all of the defendants in a case which depends upon its jurisdiction for diversity that this court has no jurisdiction. And the Ninth Circuit raises that point even the lawyers overlook it. In the case of somebody vs. Santa Fe—nobody touched on it—the Ninth Circuit of its own motion raised that point and sent the action back and held there was no jurisdiction. I think the case is Shine vs. Santa Fe.

Mr. Maddox: I would like to add a few more remarks. [9]

The plaintiff Donald C. Russell in this particular case seeks no affirmative relief whatever. He is merely joined in this case as a nominal party. He brings the action, he verifies the complaint, he joins the corporation, and that is all he does. In the event he is unsuccessful he is undoubtedly responsible for costs.

That is as far as his responsibility goes, as all that is alleged in the complaint, if your Honor has had an opportunity to read my memorandum of points and authorities—

The Court: I just glanced at them.

Mr. Maddox: —I cited the proposition, which I am sure we are all familiar with, and where diversity of citizenship is an issue which is only determined by the case of considering the indispensable parties on either side, and I submit Donald C. Russell is not an indispensable party.

The Court: Is Standard Paper Box an indispensable party?

Mr. Maddox: It is without any question.

The Court: But it is a party plaintiff, and how can you make Standard Paper Box an involuntary plaintiff when you have not alleged that this is a class action? In other words, Donald Russell and Standard Paper Box, according to the pleadings, are not in the same class.

Mr. Maddox: It is not a class action, your Honor. Counsel has stated that it is, but I don't believe that it is a class action. [10]

The Court: I do not think it is a class action, but my point is you cannot make a person an involuntary plaintiff except for the medium of a class action.

Mr. Maddox: I cited the proposition that you could make them an involuntary plaintiff. Rule 19(a) of the Federal Rules of Civil Procedure provides that: "When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff."

I could see no more involuntary plaintiff than we have here today in view of the affidavits in support of the motion on the other side, and I see no particular reason why there shouldn't be an involuntary plaintiff. No harm would come to them in the event the suit is unsuccessful.

To begin with, Mr. Russell, who is one of the plaintiffs, if he improperly brought this suit is responsible in costs.

In addition, there is an indication by the affidavits filed by counsel for the defendants, as well as for the corporation, that they are not responsible to me for attorney's fees.

Under those circumstances I can see that no harm can come to anyone if, as a matter of fact, there is complete diversity of citizenship.

I chose to put Standard Paper Box Corporation as a plaintiff and submitted that they are citizens of the state [11] of Delaware. Donald Russell was admittedly a citizen of California, but a mere nominal or formal party. He asks for no relief. He asks only to be responsible in case no relief is granted.

I don't see that there is any failure on the basis of the rule stated here in *People vs. Bruce*, 129 F. (2d) 421, Ninth Circuit, 1942, which says that "the nominal party plaintiff will be disregarded and jurisdiction determined by the citizenship of the relator when it appears that the relator is in fact the beneficial party in interest."

In fact, this plaintiff alleges that this corporation is the beneficial party in interest, that the corporation as an entity is being deprived of its assets, that it has no valid and acting board of directors and that these people that are in management and control are taking its funds. Under those circumstances it certainly is the real party in interest.

The plaintiff Russell, on the other hand, asks for nothing, no money, no other relief of any type, except to have it declared that this corporation has no board of directors, that they have an election

in which a proper board can be elected, that they have these particular officers enjoined forever from operating this corporation in the manner in which they have been so doing. And that certainly, your Honor, is not a class suit. It is a suit as though the corporation had by some fortunate circumstance acquired the [12] management, control and gain, and then go after these individual defendants.

Point out this, your Honor, that this counsel comes in here on one foot, if the court please, and makes a motion on behalf of individual defendants who are the defendants and who are presently the officers and directors, and then he stands on the other foot and says he represents the corporation. If he does, it is the same body, if the court please.

And look at the thing that we have here. We have an admission on the part of this counsel—and I am being as careful as I can when I say this—he admits all of the things in the pleadings to be true. He admits, on the one hand, although he is counsel for the defendant individually, on the other hand he is supposed to be the counsel for the corporation, and here is a situation where these defendants are milking the defendant. How can you come into court and say he represents one or the other? I think he has to represent one. If he comes in here to represent the defendant, let him do so; if he wants to come in and represent the corporation, let him make a proper motion. Let him intervene if he wants to do so. Let him present his pleadings properly and let him allege we had no authority to file this suit. It is a proper matter of issue. It is so provided under the rules

of civil procedure. That case can be tried on the merits and determined whether or not these people have an [13] adverse interest.

I do not believe that it is a proper thing to dismiss this matter at this time on the grounds of lack of jurisdiction when it appears affirmatively on the face of the complaint that this corporation is an involuntary plaintiff and as such makes a complete diversity of citizenship between itself and the individual defendants, and that on the face of it is sufficient.

If your Honor has any further doubt, you have jurisdiction in this matter to have it put over until the hearing on the merits and I think that is the worst that should happen, if the court please.

The Court: You have filed all the memoranda you want to file, both sides? (Assent.)

I will have the matter submitted, and on the John Russell matter, under that code section, I think all matters should be stayed until the hearing and order has been had on the motion for deposit of the costs.

You say that is set for June 23rd now?

Mr. Loring: Yes, your Honor.

The Court: I do not know that I can hear it on that date. It may have to go over until the following Monday, because I am still driving down here and holding court every Monday and from now on I am going to make it every other week instead of every week to go back to Fresno. [14]

Mr. Loring: What day of the week is the 23rd?

The Court: Monday. The 30th is the Monday following after that.

Mr. Loring: If the court please, there is some question about the hearing of that motion for security. Under the code, Section 834, it must be heard within 30 days but the court has authority to extend the period, I believe, for 60 days. I have procured an order from Judge Yankwich extending the time within which that motion could be ordinarily presented until June 24th, and if your Honor cannot hear it on the 23rd I am wondering if your Honor will make an order continuing the date within which I may orally present the motion until after the date that your Honor has fixed.

The Court: It is now set for June 23rd?

Mr. Loring: Yes.

The Court: I will leave it set for June 23rd and it may be that I will be here to hear it that day. But if I am not you take it up with Mr. Stacey, my clerk, who remains here and he will be in touch with me to find out from me in Fresno whether or not I will be here on that date or the following Monday. In the event I cannot hear it on that date, if you will present an order in sufficient time I can make the order within the 30 days.

Mr. Loring: Thank you.

The Clerk: That is all, your Honor. [15]

The Court: Court is adjourned.

(Whereupon, at 10:50 o'clock a.m., court was adjourned.) [16]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the

United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Fresno, California, this 22nd day of September, A.D. 1952.

/s/ AGNAR WAHLBERG,
Official Reporter.

[Endorsed]: Filed September 17, 1952.



[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 52, inclusive, contain the original Complaint; Notice of Motion Under Rule 12 for Order of Dismissal for Lack of Jurisdiction and Other Relief and Order and Points and Authorities; Affidavit of Charles A. Loring in Support of Motion to Dismiss, etc.; Memorandum in Opposition to Motion of Defendants to Dismiss and Other Relief; Order of Dismissal; Notice of Entry of Order of Dismissal; Notice of Appeal; Statement of Points on Appeal and Appellants' and Respond-

In the United States Court of Appeals
for the Ninth Circuit

Appeal No. 13548

STANDARD PAPER BOX CORPORATION, a
Delaware Corporation, and DONALD C. RUSSELL,

Appellants,

vs.

CHARLES RUBLE, SR., CHARLES RUBLE,
JR., R. T. MILLER, FRANK W. CLARK,
JR., GEORGE P. RICHARDSON and ASSOCIATED PAPER BOX COMPANY, a
Washington Corporation,

Appellees.

APPELLANTS' STATEMENT OF POINTS
ON APPEAL

Pursuant to Rule 19 of this Court, the following is appellants' statement of points on appeal upon which appellants intend to rely:

1.

The District Court erred in finding that there is no requisite diversity of citizenship between the parties.

2.

The District Court erred in ordering dismissal of the above-entitled action for lack of jurisdiction on the ground of lack of diversity of citizenship.

3.

The District Court erred in failing to find that Plaintiff Donald C. Russell is a mere formal or nominal party.

4.

The District Court erred in failing to find that Standard Paper Box Corporation is an indispensable party plaintiff whose citizenship is diverse from all of the named parties defendant.

5.

The District Court erred in failing to find that said Court has jurisdiction of said action in that it affirmatively appears that there is the requisite diversity of citizenship between the parties within the meaning and requirement of Title 28 U.S.C.A., SS 1332.

6.

The District Court erred in granting the motion of Defendants to dismiss the action and ordering said action dismissed.

Dated: At Beverly Hills, California, this 19th day of September, 1952.

/s/ J. ROBERT MADDOX,
Attorney for the Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed September 27, 1952.